



The Code of Stephan Dušan

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Source: *The Slavonic and East European Review*, Vol. 28, No. 71 (Apr., 1950), pp. 516-539

Published by: the [Modern Humanities Research Association](#) and [University College London, School of Slavonic and East European Studies](#)

Stable URL: <http://www.jstor.org/stable/4204151>

Accessed: 14/06/2014 10:23

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THE CODE OF STEPHAN DUŠAN

Translated with Notes by MALCOLM BURR, D.Sc.

PART II ¹

Article 101. On Violence

There shall be no violence against any man in my dominions: and if there should be a case of assault or violence, let all his horses be taken from him, one half to the Tsar, the other to him who was attacked.

The Athos text adds that the penalty shall be "as set forth in the Law Book of the Holy Fathers," where (in the *Syntagma* of Matthæus Vlastaris, bk. *Φ*, chap. 8) we read that in the event of a death ensuing as a result of an armed attack, if the guilty party were noble, his estate was forfeited, and if a commoner, he was beheaded and his body thrown to the wild beasts.

Article 102. On Cautionary Deposits

There shall not be deposited any caution by any man at any time. And whoso shall so do, he shall pay sevenfold.

This is probably a prohibition of the making of large deposits of caution money, the *deposita in litis æstimationem pecunia*, of Justinian, and the "wed" of old English law. Šafárik has shown that it existed in old Czech law, under the name *vzdant*, where it was chiefly invoked for material damage of a rural nature, such as felling timber, damage by straying cattle, poaching and land disputes. The Serbian word, *uzdanije*, is the phonetic equivalent of the Czech word.

Article 103. On the Trial of Slaves

In the case of slaves, they shall be tried before their own lords for all their own affairs, but for crimes they shall go before the judges, that is for bloodshed, murder, theft, brigandage and harbouring men.

For the crime of harbouring, see note under Article 141. This article illustrates the development of what were in English law called "pleas of the crown," of which the royal courts took cognisance even in the case of the unfree, inasmuch as such crimes involved a breach of the king's peace.

Article 104. On Officers in Absence of Husband

The officer of the court shall not call upon a wife when the husband is not at home, nor shall a wife be summoned to court without her husband, but a wife shall give her husband notice when she goes to court. And in that matter a husband is guiltless, until she give him notice.

This article shows a regard for the sanctity of the home which is quite in keeping with the Serbian tradition.

The word translated "officer" is *pristav*.

¹ Cp. this *Review*, Vol. XXVIII, No. 70, pp. 198 seq.

Article 105. On the Contradiction of Charters

Imperial charters which are produced before the judges in any matter, which my Code contradicts, and which the court find invalid shall be brought and submitted to me.

The wording of this clause is involved, but the meaning seems clear enough. The Tsar had evidently found that cases were liable to occur where charters and deeds of gift ran counter to the law as written in the Code. Therefore he orders the judges, in cases of such collision, to refer the matter back to him and produce the original deed. Compare also Arts. 78 and 83.

But experience showed that this procedure was unsatisfactory and in 1354 he amended it, in Article 171, where he issues direct orders to the judges that the Code itself is final and authoritative and overrides any separate deeds or enactments issued separately by the Tsar.

The word translated "charters" is *knige*, literally "books."

Article 106. On Lord's Servants

If any servant of a lord do any crime, if he be the son of an official let him be judged by his father's household by jury; but if he be a commoner, let him be taken to the cauldron.

A lord had his own servants or officials (*dvorani*) to whom he made grants from his estates in the form of *pronije* or fiefs (see Art. 68). He would employ the sons of such officials as pages, messengers and so on, as the officials must have been men of education, very likely of noble birth since their privileges are here expressly protected.

Commoners, on the other hand, probably employed as cooks, grooms, servants, craftsmen, would have to undergo the ordeal by boiling water (see Art. 33).

For trial by jury (*porota*), see Arts. 151 et seqq.

Article 107. On Beating Cooks

Whoso shall beat the cook or officer of a judge shall be imprisoned and all that he hath taken from him.

Dušan's judges were itinerant, constantly travelling about the country, as Novaković comments, where inns were few and probably confined to the cities and towns, so there is nothing remarkable in their taking a personal cook with them, as well as their beadle. It was also a protection against poisoning. The effect of the Article is to protect the personal staff of the judges and to add dignity and security to the judicial service, and in this way is quite consistent with Art. 111, and the general trend of Dušan's legislation to promote the efficiency and independence of the judiciary.

The words translated "cook" and "officer" are *sokalnik* and *pristav*.

Article 108. The Tax on Taking Possession

Touching the tax on taking possession, let it be thus: on land, three perpers to the officer on a village; on a mill three perpers: on a district, three perpers on each village and on a city, a horse and raiment: on a vineyard three perpers: on a horse one perper: on a mare six dinars: on a bull four dinars: on a sheep three dinars.

KK

This tax, *izdav*, seems to have been a payment to the office of the court by successful litigants.

The "district" is the *župa*.

Article 109. On Poisoning

If a magician or poisoner be detected, let him be punished according to the Law of the Holy Fathers.

The Law of the Holy Fathers means the Syntagma of Matthæus Vlastaris. No copy of the Code exists without having the Syntagma attached to it.

The word translated "magician" is *Maginik*.

Article 110. On Violence

Judges who travel about my dominions and in their own province may not take their maintenance by force, nor ought else, save only gifts which may be given them by free will.

The interest of this clause lies in the evidence that the judges were on circuit within a definite district (*oblast*) and that they had the right to a fixed maintenance (*obrok*) for themselves and their staff, payable by the county.

For the province, functions and duties of judges, see Arts. 175, 179 and 182.

Article 111. On Insulting Judges

Whoso shall insult a judge, if he be a lord, let all be taken from him ; but if it be a village, let it be scattered and confiscated.

This Article, together with No. 107, protects the persons and dignity of the judges, who were by their very duties exposed to the anger of disappointed and often formidable, litigants.

For scattering, see Art. 24.

Article 112. On Escape from Prisons

If any man escape from prison, so soon as he come to my court, be he my man or a man of the Church or of a lord, forthwith let him be free. And if he escape, whatsoever he leave, let it belong to him from whom he hath escaped.

The word translated "prison" is *temnica*, literally, a dark place.

Article 113. On Asylum

And any prisoner kept in my court, if he escape to the court of the Patriarch, let him be free, and similarly if to the court of the Tsar, let him be free.

This version of the right of asylum is framed on more generous terms than at Byzantium, where exception was made of heretics, heathens, slaves, murderers, adulterers and traitors. Dušan excludes only serfs (Art. 72).

Article 114.

Men who have broken a bail and return from abroad to my dominions, those who have given security for them shall pay nought.

Novaković quotes a modern instance of the use of bail when, in 1825, Milosav Resavac cleared the Resava of brigandage, which was very rife in that district at the time, he made use of the system of guarantors.

Article 115. On Absconders

If any man receive another from another estate who shall have fled from his own lord or court, if he produce the Tsar's letter of pardon, it shall not be contradicted.

But if he shew no pardon, let him be sent back.

This clause once more illustrates the tendency of Dušan's legislation to strengthen the hold of the landowners upon their men and their power of judgment over their own villeins and serfs.

Article 116. On Finding

If any man find anything within my territory, let him not take it and say: "I will return it if any man find out." If any man take or seize aught, let him pay what a thief or robber would pay. But whoso find anything while in the army in a foreign land, let him bring it to the Tsar or to the commander.

Article 117. Of Seizures

If anything come to any man in the Tsar's realm out of some city or other district which belonged to some other lord before the Tsar took that land or county, there shall be no claim, neither of man nor of aught else. But if that happen after the Tsar annexed those lands to his realm, it may not be claimed with these words: "This is from the war-time, when the lands and towns did not belong to the Tsar."

The text is somewhat corrupt and I have followed the transcription of Novaković, which makes the meaning clear enough.

Article 118. Of Merchants

No man, noble or other, may molest merchants who travel about the Tsar's dominions, nor rob them by force nor scatter their merchandise, nor take their money by force. Whosoever shall be found seizing or robbing their merchandise shall pay five hundred perpers.

This clause was evidently inserted for the sake of ratification and promulgation from the text of the commercial treaties with Dubrovnik, the party most vitally interested in the trade of Dušan's dominions, as the security of their numerous agents, depôts and caravans was of capital importance. A commercial treaty with Dubrovnik had been signed as early as 1195-1228 by Stephan the First-Crowned, who held the counties responsible for the safety of passing traders. One of the first acts of King Milutin was to make the villages liable, or in their default the crown itself, as a guarantee and to decree the penalty of five hundred perpers.

Article 119. Of Merchants

Merchants who trade in scarlet cloth of better or inferior quality shall travel freely without hindrance in my dominion and sell and buy and trade however commerce may require.

Scarlet cloth was used in the state robes of the court and noblemen. The Serbs evidently first heard of it from Italy, as they called it *škrlat*, probably from the Persian *sagalat*. It was originally the name of a heavy cloth, introduced to Europe by the Venetians.

Article 120. On Customs Officers

An Imperial customs officer may not hinder nor detain any man in order to sell his goods at a low price: to every man the markets are free and every man may take his goods wheresoever he will.

This general order for the protection of the right of free commerce was constantly enacted and repeated in commercial treaties and is inserted in the Code for final confirmation.

Article 121. On Pre-emptions

And no lord, either small or great, nor any other man may detain and hold as security his own or other merchants, to prevent them from proceeding to the Imperial markets. Let every man proceed freely.

This is a prohibition of the right of pre-emption which some lords had enjoyed, and an implied reservation of the right to the crown.

Royal pre-emption of meat is mentioned in a commercial treaty between King Milutin and Dubrovnik.

Still, the lords seem to have been strong enough actually to use the right, certainly after Dušan's death, for it survived into Turkish days. Novaković quotes a local enactment of the Sanjak of Nikopolis, which reserved to the pasha the first right of selling young wine and grapes for "two or ten days after the harvest," to enable him to dispose of his own supplies without competition. It was, in fact, probably a universal privilege of the ruling authorities throughout the Ottoman Empire, a legacy of the feudal days.

Dušan set his face against it. At the very beginning of his reign, before he assumed the imperial title, he issued a decree prohibiting anyone from hindering the men of Dubrovnik, or any other "man of the land," that is, agriculturist, from dealing freely in corn, under fear of the king's displeasure and a fine of 500 perpers.

Article 122. Of Merchants

And if any lord detain a merchant, let him pay three hundred perpers: and if a customs officer detain him, let him pay three hundred perpers.

Article 123. On Saxons

On market towns. Wheresoever Saxons have cleared forest up to the date of this Council, that land let them have. And if they have unlawfully taken any land from any lord, let the Lord sue them according to the law of the Sainted King. But from henceforth a Saxon may not clear and that forest which he clears shall not belong to him, nor shall

they settle people there, but it shall stand empty, so that the forest grow. Let no man forbid a Saxon so much timber as he need for his business, so much let him fell.

The "Saxons," i.e. German immigrants, who were engaged in mining and metallurgy, had cleared forests and squatted in the same way as the original Serbs; Dušan was determined to stop this, though at the same time allowing them such timber as they needed for fuel or constructional work.

It is curious that this clause is only in the Prizren and Rakovica texts, the latter differing in only a few minor orthographical discrepancies. Its omission by the later copyists is understandable, since its provisions were by their time obsolete, but its absence from the Athos and Struga texts is surprising.

The word clearing, *krčevina*, means the original estate of a family, cleared by them from the primeval forest; it was free and could not be alienated, as distinct from a *baština*, which could be bought and sold.

Article 124. Of the Law in Towns

Greek towns which the Lord Tsar hath taken, whatsoever charters ¹ and decrees ² have been granted to them, whatsoever they have and hold up to the time of this Council, let them hold, and it is confirmed to them and let no man take aught from them.

¹ i.e. *chrisoboulie*, Gk. χρυσобούλλα.

² i.e. *prostagne*, Gk. προστάγματα.

Article 125. Of Maintenance in Towns

Towns are not liable to the maintenance of officials. When a countryman come, let him go to the inn, either small or great, and let him hand over his horse and all that he hath, that the innkeeper take charge for him entirely. And when the guest leaves, let the innkeeper hand to him all that he hath received from him; and if anything be lost, let him pay its full value.

As was the general custom in mediæval Europe, State officials and employees and foreign ambassadors and envoys enjoyed the right of demanding board and lodging (*prisellice*) on their journeys. This right was probably abused and Dušan did all he could to limit it. The system was necessary in remote places, where the liability was thrown on the counties (cf. Arts. 155 and 156). But in the towns there were inns "both great and small," so the system was unnecessary.

"Inn" is *stanićina*.

Novaković quotes an interesting extract from Jireček (*Arch. f. Slav. Phil.*, xiv, pp. 75-77), describing an actual case arising under this clause. It is from the records of the courts of Dubrovnik for the year 1405. Some traders from that city arrived at Vučitrn, coming from Priština, and entrusted their horses and goods to the innkeeper, who took charge of them and locked them up. But owing to some incident connected with the unexpected arrival of a Turk, something was lost. The merchants brought an action against the innkeeper under this clause and won their case.

Article 126. Of Town Lands

If there be robbery or theft on urban land around a town, let the neighbourhood pay for it all.

As every village was responsible for misdeeds on its territory, in the event of a thief or robber not being arrested, so here we have the responsibility thrown on the surrounding district, (*okolina*) for crimes committed in the neighbourhood of a town.

It would be expected that the town itself would be liable, as the land is specified as *građska zemlja što je okolo grada*, the town land that is around the city. Probably the reference is to the agricultural holdings of the burghers outside the town walls.

Article 127. Of the Building of Towns

For building towns. Where a town or castle is overthrown, let the citizens of that town rebuild it and the district in which the town is situated.

In those troublous times the damaging or destruction of a town was doubtless of frequent enough occurrence and the burden of reconstruction was a heavy drain on the resources of the citizens, especially in sparsely populated districts, and so it was shared by the surrounding district (*župa*), which enjoyed the protection of the city.

Article 128. Of Aid to the Tsar

When the Lord Tsar hath a son to marry or a christening and hath need to build a court and houses, let every man help, both small and great.

This was one of the public duties due to the Tsar from his subjects. Despot Stefan Lazarević, in a deed of gift to the Monastery of Hilendar in 1411, exempted the monastery from "works to my lordship of building a house and court." These are extraordinary aids (*auxilia*). In contradistinction the regular aids were paid on the occasion of the marriage of a daughter, the knighthood of a son, or to ransom a sovereign from captivity, as in the case of Richard Cœur de Lion.

Article 129. Of Commanders

In every army the commanders have authority even as the Tsar himself. What they say, let it be obeyed. If any man disobey them in aught, he shall be tried even as though he had disobeyed the Tsar. And the courts, small and great, which are in the army, the commanders shall judge them and none other.

This is a definite delegation of the imperial authority to the military commanders, *vojvodž*, and provision of courts martial.

Article 130. Of Churches

Whosoever in the army destroys a church, let him be killed or hanged.

Hanging was reserved for the most disgraceful of crimes, such as the killing of priests (cf. Art. 95).

Article 131. Of Brawling

In the army there shall be no brawling. If two quarrel let them fight

a duel, and no other soldier shall help them. And if anyone go to succour or help, let him be flogged.

The Struga Text has for the last words *da se ubiju*, let them be killed, for while *biti* means to beat, strike or fight, *ubiti* means to kill. Novaković regards this as a copyist's slip, but the Athos group of texts prescribe the ferocious penalty, "let their hands be cut off," for those who intervened in the quarrel.

Article 132. Of Booty

If anyone in the Imperial dominions buy aught from booty taken on foreign soil, it is free to him to buy that booty provided he do so not within the territories of my Empire, but on foreign soil. And if someone accuse him, saying: "That is mine," the dispute shall be settled before a jury according to the law, whether he bought it on foreign soil and is not a thief nor a receiver nor an abettor: and such let him hold as his own.

From this clause and No. 116 it is clear that looting was recognised as a custom, but subject to certain restrictions.

Article 133. Of Ambassadors

An ambassador proceeding from a foreign country to the Tsar, or from the Lord Tsar to his own lord, when he come to any village, let honour be done him, that he have enough; but he must only stay for dinner or for supper and go his way to another village.

The word translated "ambassador" is *poklisar*, from the Byzantine ἀποκριτάριος.

Article 134. Of Hereditary Estates

When the Tsar grant a hereditary estate, let him to whom a village is given pay the *logofet* thirty perpers for the charter: but to whom a county is given, for each village thirty perpers and six to the clerk for the writing.

The word translated "hereditary estate" is *baština*, the "charter" is *chrysoboul*, and "county" is *župa*.

For the functions of the *logofet*, compare Art. 25. The word for clerk is *dijak*, from the Greek δάκρυος, "servant," whence the English word deacon.

Article 135. Of the Army

If the army go through the Tsar's land and lodge in any village, let not the train¹ which follows the army lodge in the same village.

¹ *drouga*.

IN THE YEAR 6862, the SEVENTH OF THE INDICTION

Article 136.

My Imperial writ may not be disobeyed, to whomsoever it be sent, be it to the Lady Tsaritsa, or to the King, or to the lords, great or small, or to any man. No man shall disobey what is written in my writ. But if such a writ cannot be fulfilled, then let him who received it go forthwith back with the writ to me to explain to me.

This clause is the first Article in the Supplementary Code, dating, according to the majority of the MSS., from the year 6862, that is, 1354. The clauses are of a somewhat different character, less generalised, dealing less with general principles, and more particular, evidently inspired in the light of experience gained since the first Code was promulgated.

The Tsar had been granting very extensive privileges to the Church and to the nobles, but here by special edict he asserts his paramount authority over all, including the Empress herself, and the *kralj*, or King, which in the Code always means his son Uroš.

The word translated "writ" is *kniga*, lit. "book."

Article 137. Of Charters

My charters which I have granted to the towns of my Empire, that which is written in them may not be changed, even by the Lord Tsar himself, nor by any other man. The charters are firm.

Art. 124 had already confirmed the existing rights of the Greek cities incorporated within the empire by Dušan's conquests. This may have caused some apprehension among the Serbian nobility that their privileges were in some way threatened, and consequently their charters, here also called by the Greek name of "golden bulls," *chrisoboli*, are definitely and finally confirmed.

Article 138. Of Errors

If there be in any charter a word wrongly written and there be meanings changed and words altered otherwise than my Majesty commanded, let these charters be torn up and they shall not have the inheritance.¹

¹ i.e. *baština*.

Article 139.

No master may do to a serf within the territories of my Empire aught that is contrary to the law, save only what I have written in the Code. That shall they do and give. And if he do aught to him against the law I enact, every serf is free to lay plaint against his master, be it I the Tsar, or the Lady Tsaritsa, or the Church, or my lords or any man. No man is free to withhold a serf from my Imperial Court, only the judges shall judge him according to right. And if the serf win against his master, let my judge give warranty that his master pay all to the villein at the appointed time, and that his master do no evil to the villein after the sentence.

The words translated "master", "serf" and "lord" are respectively *gospodar*, *měrop'ch* and *vlastilín*.

Here again is evidence that this part of the Code is a supplement to the original, in the reference to the earlier part, that is, to Art. 68, which confirms the division of the land into State or Imperial, ecclesiastical, and the baronial, and that of the free men, and confirms the terms of feudal service due in *baštine*, or hereditary estates, and *pronije*, or fiefs granted in return for service, which differed only in the power of disposal and inheritance.

Article 140. Of Receiving Men

My Majesty commands. No man may receive any man, neither I the Tsar, nor the Lady Tsaritsa, nor the Church, nor a lord, nor any other man whosoever may receive any man without my Imperial writ. And if he receive him, let him be punished as a traitor.

Article 141.

And also in the market-towns, county prefectures, and in the cities, if anyone receive any man, in the same way shall he be punished and given up.

After protecting the villeins against the tyranny of their lords, the Code now proceeds to forbid once more the crime of harbouring fugitive serfs, and to bind them more irrevocably to the land.

Article 142. Of Lords

Any lord, greater or less, to whom I have given land and towns, if any one of them be found to have seized villages and people against the law of my Empire which I have enacted in my Council, let his estate be taken from him and all that damage which he has done, let him pay for from his own house and let him be punished even as a deserter.

This clause is supplementary to Art. 57, which deals with the abuse of authority and hospitality on the part of barons when travelling on duty or some temporary service. But this clause deals with cases where the barons were appointed to administer newly acquired territories. Dušan's policy was to administer the new provinces wisely and justly, so he sharpened the punishment for misdemeanour from mere confiscation to that of a deserter, which included mutilation.

Article 143. Of Brigands

If any brigand, coming through a frontier province, rob anywhere and again return with his booty, let the Warden of the Marches pay sevenfold.

This clearly supplements Art. 49, which provided for Wardens of the Marches or counts palatine (*kraištniki*), who were held responsible for raids by foreign enemies; they are now held liable for the incursions of armed brigands (*gousari*) from across the frontier.

Article 144. Of Those who go Abroad

If any lord, great or small, or any other man of my Empire fare abroad, and the neighbouring village and the county around arise and

plunder his home and cattle which he has left, those who do so shall be punished as traitors to my Empire.

This supplements Art. 58, which provides quiet succession in the event of the death of a landowner and protects his property during the interval.

Article 145. Of Brigands and Thieves

My Majesty commands. In all lands and in the towns and counties and in the marches there shall be no Brigands nor thieves in any region. And in this manner shall thieving and brigandage be stopped. In whatsoever village a thief or brigand be found, that village shall be "scattered" and the brigand shall be hanged forthwith, and a thief shall be blinded and the headman of the village shall be brought before me and shall pay for all that the brigand or thief hath done from the beginning and also shall be punished as a thief and a brigand.

Article 146. Of Bailiffs

And also prefects and lieutenants and bailiffs and reeves and headmen who administer villages and mountain hamlets. All these shall be punished in the manner written above, if any thief or brigand be found in them.

The words used for these village officers are *knezovŭ, prēmikjorje, vladal'ar, prědstanici* and *čel'nici*.

Article 147. Of Bailiffs

If any bailiff make a report to his master and that lord be inattentive thereto, he shall be punished as a brigand or a thief.

(In the condition of the manuscripts the translation of this clause must be accepted only as provisional.)

These three clauses go together and illustrate the extent of brigandage in the country at the time, as well as Dušan's resolution to stamp it out.

The word *gospodar*, translated "headman" in Art. 145, literally "lord," must not be taken in this context to mean more than a prominent yeoman in the village, having his own holding, and acting in the capacity of representing the village, on the analogy of the present-day *mukhtars* of Macedonia and the *predsednici opštine* of Serbia.

In Art. 146, Dušan includes various administrative officials in the net, threatening them with the actual penalties of the criminals if they were caught harbouring them.

Article 148. Of Judges

If a Church, or a lord, or any other man in my Empire disobey the writ of my judges whom I appoint to judge in the land, or whatever they write concerning any brigand or thief, they shall all be punished as disobedient to my Majesty.

This and the next two clauses are all part of the one series dealing with brigandage.

Article 149. Of Brigands and Thieves

And in this manner shall a brigand or thief be punished, who is taken in the act. He is deemed guilty if there be found on him a stolen thing, or if he be taken in the act of robbing or thieving, or when they are handed to the county or to the village, or to the headmen or to the lord who is over them, as written above. And these brigands and thieves shall not be pardoned but blinded and hanged.

Similar summary punishment of the "hand-having thief" is to be found in the Anglo-Saxon codes.

Article 150. Of Thieves

If anyone sue a brigand or thief in the courts and there be no proof, then shall he undergo ordeal by iron, as I have decreed. Let them take him to the doors of the church from the fire and place it upon the Holy Table.

The procedure in Ordeal by Hot Iron was as follows: a piece of iron was heated in the doorway of a church and the accused was obliged to lift it from the fire and place it on the Holy Table. If he succeeded in doing this without hurting himself he was declared innocent and discharged, but if he burnt his hands, it was deemed that God had declared him guilty. The effect was obviously to leave the decision in the hands of the priests.

Article 151. Of Juries

My Majesty commands. From now henceforward let there be a jury for great things and small. For a great matter, let there be twenty-four jurors, for a lesser matter twelve, and for a small matter, six. And these jurors shall not make peace between the parties, but shall acquit or convict. And let every jury be in a church and the priest in robes shall swear them. And in the jury those are believed whom the majority acquit on oath.

The last sentence means that the jury (*porota*) decided by a majority vote.

Article 152. Of the Law

As was the law under the Sainted King my grandfather,¹ so let great lords be jurors for great lords, for middle persons their peers, and for commoners their peers. And on a jury there may be neither kinsman nor enemy.

¹ i.e. King Milutin.

Article 153. Of Merchants

Juries for foreigners and merchants shall be made half of Serbs and half of their fellow-countrymen, according to the law of the Sainted King.

Article 154. Of Jurymen

When jurors acquit on oath according to the law, and after acquittal guilt be proved against him whom they have acquitted, I shall fine those jurors one thousand perpers each and in future those jurors shall not be believed and they may not take either husband or wife.

The jury system expounded in these four clauses is really a development of Arts. 79 and 80, concerning village boundaries, and Art. 106, about the trial of certain privileged persons, providing for the reference of the dispute to assessors of equal rank with the litigants, and to the empanelling in the proportions of half and half to represent each party, although in Art. 80 the jurors have rather the function of expert witnesses.

Here we have a Serbian custom, by no means the invention of Dušan, but the elaboration of the existing system already legalised by his grandfather King Milutin, who in his turn certainly only formalised an ancient national institution.

The *porota* was not a jury in the English sense of the word to-day, as it was used in civil but not in criminal cases. Also, it did not merely give verdicts, but actually tried cases. It had, in fact, judicial functions.

The earliest commercial treaties with Dubrovnik, as far back as the early days of King Stephan the First-Crowned (1196-1228), even before his coronation, provide courts for the settlement of disputes, which sat at an appointed place and time, that is, from St. Michael's Day (29 September) to St. George's Day (23 April), and a later enactment of the same kind reserved such disputes for the king's court.

The standing court was a mixed, elected tribunal, in fact, a Court of Arbitration, held near Dubrovnik.

Apparently Milutin found that the long journey to Dubrovnik involved inconvenience and expense to his subjects, and so provided for the holding of mixed courts at any place. One of his decrees enacts that in a dispute between a Serb and a Ragusan, the decision be referred to one Serb and one Ragusan, and if between a Saxon and a Ragusan, to one Saxon and one Ragusan.

But none of the records of Milutin refer to juries and the word *porota* does not occur, yet Dušan definitely attributes the institution to his grandfather, and in an edict of the same year as the Code, 1349, granting certain privileges to the Ragusans, he provides for each side, in mixed disputes, to provide one half the jury, "one half of Serbs and one half of Latins, according to the Law as it was in the time of my father and of my grandfather the Sainted King."

It must have been an ancient institution of the Serbian people, for the word *porotnik* occurs in the Vinodol Charter of 1288, which had no connection with the Serbs of the kingdom and empire.

Art. 152 also formalises the principle of trial by peers, which was promulgated by Milutin and gave the litigants the right of protest against the presence on the jury of a kinsman of the other party or of a definite enemy.

Another interesting point is the expression "middle-class people," which seems to indicate the beginning of the breakdown of the strong distinction between the privileged and unprivileged classes: here we have the greater barons on the one hand and the commoners on the other sharply discriminated as usual, but for the first time we find a definite recognition of an intermediate class, which presumably included the lesser barons, the merchants, the townsfolk and tradesmen, superior craftsmen, who were not of aristocratic rank, but superior to the rank and file of the

commoners and countryfolk in general. Perhaps the expression "good people" in Art. 97 refers to this early bourgeoisie, in which we must probably include the foreign residents, Saxons, Ragusans and Italians, who formed the chief element in the towns.

Art. 153, in contrasting foreigners and merchants with Serbs, confirms the general impression we have of the period, that commerce was almost entirely in the hands of foreigners, mostly Ragusans, who, though they spoke the same language as the Serbs, were Latins in faith and Italian in culture. The other foreigners were the Saxon miners and metallurgists and probably Greek and Italian traders, and, perhaps, some German and Hungarian mercenaries.

The last sentence of Art. 154 is peculiar. Novaković follows the Prizren text, generally so trustworthy, which has *ni da se kto ot nich ni muži ni ženii*, "and let none of them take husband or wife." In Serb, as in Russian, different words are used for marrying according to the sex of the person. The Serbian verb for a man to marry is *oženiti se*, a reflexive verb from the word *žena*, woman. The word for a woman, in the modern language, is *udati se*, literally, to give oneself up, but in the Macedonian dialect the girls still use the old verb we have here, *mužiti se*, from the word *muž*, a husband. The words *ni muži* in the text cannot possibly be applied to a man. It must mean, if the text is correct, that in Dušan's time, women sat upon juries.

Rovinsky quotes a record from the Zeta, from the time of Ivanbeg (1465-1490), in a boundary dispute when a *porota* was summoned of *bjelošani* with their wives.

The later Athos and Bistrica texts have a different version, "and if they be found to have knowingly wrongfully acquitted or given up, or taken any bribe, having paid as aforesaid, they shall also be banished to another unknown land." This seems a more reasonable text, but it is difficult to reconcile it with the Prizren and Struga versions.

It is noteworthy that trial by *porota* seems to have been quite different from trial by the judges, as the two are not coupled together and the jury does not seem to have dealt with criminal cases.

Article 155. Of Maintenance

Henceforward the right of maintenance does not ensue, save when a great lord with a standard comes into a county, or a lesser lord who holds a fief and there is no connection between them, or between their fiefs, they shall pay.

Article 156. Of Maintenance

In the lands of my Empire, speaking of serfs, lords shall not take maintenance nor any other payment, save that they pay from the house.

The meaning of these two clauses is not very clear and there is probably something missing from the text.

It is evidently a restriction on the right of *prisēlica*, that is, board, lodging and transport (cf. Arts. 57, 125, 133 and 142), which had been abused, expressly denying it to lords in villages which belonged to the Tsar and were neither seigneurial nor ecclesiastical and were exempt from any burden, so that any visitor would have to pay out of his own pocket. Novaković considers that lords might not demand this privilege in the territories of other lords and that the people were obliged to give it only to their own overlords and not to others. An exception is made in favour

of a standard-bearer, an officer of high military rank, or of a lesser baron travelling on duty, who held property adjoining or a *promija*. In any case, the general meaning seems to be that the right to demand this privilege is abolished except in these two instances.

Article 157. Of Guarding Roads

Where there are mixed counties, ecclesiastical and Imperial villages, or seigneurial, and all the villages are mixed, and there is not one lord over the whole county, but if there are prefects and judges whom I have appointed, let them place guards on all roads, and let them hand over the roads to the prefects, to keep them with their guards, and if anyone rob or steal or do any crime, let recourse be had forthwith to the prefect, who shall pay him from his own house, and the prefects and patrols shall seek the robbers and thieves.

The *kefalije* or prefects were appointed by the Tsar as his representative over the towns. In addition to their former duties, they are now entrusted with that of maintaining order on the Tsar's highways and, on the old principle, are held pecuniarily responsible for robberies and thefts committed in their area, which makes this Article supplementary to Nos. 145-47.

The Article shows that, as we should expect, *župe* were often divided, and the holdings of big landowners did not necessarily coincide with the boundaries of their *župe*. Where a *župa* belonged to a single lord, there could be no question as to responsibility, the whole of which would fall upon the lord, and probably the Tsar would not be separately represented there, except by his travelling judges. Art. 160 expressly allocates the responsibility for the safety of the highways to the lord of the *župa* as to a prefect.

But in mixed *župe* there might be towns which were reserved to the Tsar himself and there the prefect carried the responsibility for the roads.

Article 158. Of Unpopulated Hills

If there be an unpopulated hill between two counties, the neighbouring villages which are around the hill shall keep the watch. If they fail to keep watch, whatsoever happen on that hill in the wilderness by way of damage or robbery or theft or any crime, then shall those neighbouring villages pay, to whom it has been ordered to keep the watch.

Article 159. Of Merchants

When merchants come for a lodging for the night, if the reeve ¹ or headman ² of the village do not admit them to rest in the village according to my law as it is in the Code, if the traveller lose aught, that reeve or headman shall pay all, for not having admitted him to the village.

¹ i.e. *vladalac*.

² i.e. *gospodar*.

Article 160. Of Guests or Travellers

If it so happen that any traveller, merchant or monk be robbed of aught by brigand or thief, or be in any way detained, let them all come

to me and I will repay them what they have lost and I will recover it from the prefects and lords to whom the patrolling of the road was entrusted.

And let any traveller, merchant or Latin come to the first guard with all that he has and bears with him, that the guard deliver him to guard all the way. And if it so happen that he lose aught, there is the jury of trusty men, and whatsoever they shall swear upon their soul to those jurors, that shall the prefects and guards pay them.

These two articles illustrate Dušan's care for the interests of commerce and his intention of protecting it efficiently. He gave protection to all travellers, but in Art. 160 he lays stress on merchants, who might be his own subjects, but were mostly Latins, that is, Roman Catholics, who were chiefly Ragusans and Venetians and occasionally, perhaps, other Italians.

Article 161. Of Jurors

When litigants are suing in court and pleading their own case and the defendant is pleading his, he is not permitted falsely to accuse the plaintiff, neither of breach of faith, nor of any other matter, but only to defend his case. But when the trial is finished, if he have aught [to say], let him discuss it with him before my Imperial judges, but he shall not be believed in anything until the case is finished.

This Article and the next two deal with procedure in the Imperial Courts. The drafting is somewhat involved, but it appears to forbid the defendant attempting to discredit the plaintiff before the evidence is heard and a verdict obtained.

Article 162. Of Officers

Officers may go nowhere without writs of the court or without my Imperial writ; but wheresoever the judges send them, they shall write them writs, and no officer shall take aught save what is written in the writ. And the judges shall keep true copies of the writs which they have given to the officers whom they have sent on business through the land. And if an officer be accused of acting otherwise than the writ prescribes, or if they have tampered with the writ, there shall be a trial for them and they shall appear before the judges, and if it be shown that they have fulfilled what is written in the copies which the judges keep, they are justified. But, if it be that they have tampered with the writ of the court, let both their hands be cut off and their tongues slit.

The *pristavi* or officers of the courts (*v. ante*, Arts. 56 and 91), had great responsibilities and many opportunities of taking advantage of their position, and this clause would hardly have been inserted in the supplementary part of the Code unless experience had shown the necessity.

Article 163. Of Judges

Every judge shall write his judgments and keep them and shall write

a copy thereof and give it to him who has won his suit. Judges shall send as officers good, honest and trustworthy men.

Article 164. Of Receiving Men

As to men. Whoso shall have harboured a man before this Council shall be tried by the first court, as is written in the first Code.

Here again we have clear evidence that this is part of a supplementary Code, published in 1354, five years after the first.

The offence of receiving or harbouring "men" or serfs from other lords, was dealt with in Arts. 140 and 141 very sharply, in contrast to the milder treatment of Art. 115 in the first part of the Code.

Article 165. Of Swindlers

If there be a swindler who lead men into deceit, lying and fraud, he shall be punished as a thief and a robber.

Article 166. Of Drunkards

If a drunken man come from anywhere and strike anyone or cut him or wound him, yet not to death, then shall one eye be removed and one hand cut off. But if a drunken man molest anyone or pull off his cap or do him other insult, but do not wound him, he shall be flogged with one hundred strokes and cast into prison, and when he is taken from prison he shall be flogged again and released.

Article 167. Of Litigants

When litigants come before the Imperial Court, those words shall be believed which they first utter, for such are to be believed, and on them shall judgment be given, but on the last words, nothing.

Article 168. Of Goldsmiths

Goldsmiths may not be in the counties and the land of my Empire, but in the market-towns, where I have ordered dinars to be minted.

Article 169. Of Goldsmiths

And if there be found a goldsmith outside the towns and market-towns of my Empire in any village, that village shall be scattered and the goldsmith branded: and if there be a goldsmith in a town who coins dinars secretly, he shall be branded and the town shall pay such fine as the Tsar saith.

Article 170. Of Goldsmiths

Let the goldsmiths be in the towns of my Empire to strike money and for other purposes.

The second half of Art. 169 occurs only in the Athos group of texts, but we may accept it as Novaković does, in spite of the omission from the older MSS.

Article 171. Of the Law

A further edict of my Majesty. If I the Tsar write a writ, either from anger or from love or by grace for someone and that writ transgress the Code, and be not according to right and the law as written in the Code, the judges shall not obey that writ but shall adjudge according to justice.

In Art. 78 the Tsar places the written law above any deeds of gift or title issued by him, but only in connection with disputes over land, where the Church is involved. In Art. 105, where his writs clash with the law, the judges have instructions to refer the matter back to him.

This practice was evidently found to be unworkable, and so the law was amended by this decree and the written Code made paramount, overriding any special edicts or writs issued by the Tsar from time to time.

Article 172. Of Judges

Every judge shall judge according to the Code, justly, as written in the Code, and shall not judge by fear of me, the Tsar.

This guarantee of judiciary independence is based on the Byzantine tradition *principes legibus alligatus* (cf. Bury, *The Constitution of the Later Roman Empire*, Cambridge, 1910, p. 29) and it has been shown by Radojčić that these clauses are based upon a Novella of Manuel Comnenus of 1159.

Article 173. Of Lords

Lords, greater and lesser, who come to my Imperial Court, whether Greek, German or Serb, whether great lord or anyone else, and bring with them a brigand or a thief, shall be themselves punished as a thief or a brigand.

As the lords who visited the Imperial Court were usually accompanied by a numerous retinue, probably including foreign and other mercenaries and armed retainers, it was a necessary precaution to hold them responsible for the misdeeds of their party.

The reference to Germans is interesting. The Saxon mining and metallurgical engineers would hardly include courtiers among their number, and they are invariably referred to as *Sasi*. Here we have the word *Němac*, German, and the allusion is probably to officers commanding detachments of mercenaries, such as the German Palmann, or Philippe de Mezières.

Article 174. Of Hereditary Estates

Workers on the land who have their own inherited property,¹ land, vineyards or purchased estate, are free to dispose of their own lands and vineyards, to give them as dowries, to give them to the Church, or to sell them, but there must always be a labourer on that place for him who is lord of that village. If there be no labourer in that place for him who is lord of the village, the same lord is free to take the vineyards and the fields.

We have the unusual word *zemljanin*, literally, a man of the land, really an agricultural labourer; a similar expression, *ot zemskih ljudi*,

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from men of the land, occurs in an edict of Stephan the First-Crowned, in contrast with the Vlah and Albanian herdsmen. In a deed of gift by Dečanski, father of Dušan, to Hilendar, we have *zemljanin* in the sense of any man holding land, whether noble or base, and in Dušan's commercial treaty with Dubrovnik, it occurs in the sense of a rural worker who sells his corn.

¹ i.e. *baština*.

Article 175. Of Judges

Whoso be judge in my Imperial Court, let him judge such crimes as occur there. The Court judges shall also hear cases where litigants happen by chance to meet in my court. But let no man summon to trial in my Imperial Court, but in the circuit of the judges whom I the Tsar have appointed. Let each appear before his own judge.

Dušan retained a judge attached to his Imperial Court, to try cases actually arising there, a germ of a King's Bench. The same function was performed by the Palatine in Frankish courts, and by the *soudi* of the early Bohemian princes.

Article 176. Of Towns

All towns which are in my dominions shall be in relation to the law in all things as they were in the days of the first Tsars. For suits which citizens have between themselves, let them be judged before the prefects of the towns. Or before the Church courts. And if a man from the country have a case with a citizen let him sue before the prefect of the town and before the Church and the clergy. According to the law.

The first sentence amplifies the confirmation of the urban rights which was granted to the Greek towns in Art. 124 and is now extended to all towns in the empire. It then proceeds to give judicial power to the prefects, here called *vladalac*, a word which is generally used for the reeve or headman of a village, and to the ecclesiastical authorities.

Article 177. Of Suits at Court

Lords who dwell always at my court, if they are sued, shall be tried by my court judges, and no one else shall try these cases.

Article 178. Of Judges' Writs

If judges send their officer or writ and any man disobey and repel the officer, then shall the judge send his writ to the prefects and to the lords in which province the disobedient party is, that these authorities execute the writ of the judge. And if these authorities do not so execute, let them be punished even as the disobedient ones.

Article 179. Of Judges

Judges who are travelling within the bounds of their circuit shall attend to and assist the poor and the needy.

Article 180. Of Stolen Goods

If anyone find aught robbed or stolen or taken by force, let each

party in the case give evidence.¹ If anyone buy anything, either in the territories of my Empire or in another land, let him give evidence touching it, and if he produce no evidence, let him pay according to the law.

¹ *svod*, which means a special process of inquiry in cases of disputed ownership and charges of theft, especially of livestock. The accused party was called upon to give an account of his possession of the animal, and from whom he had originally acquired it; that person was then sent for and interrogated, and so on, until the whole history of the animal was traced back, and the existence, or otherwise, of a theft finally proved. The Anglo-Saxon codes are full of similar efforts to deal with cattle-rustlers.

Article 181. Of Suits Before the Tsar

My decree to the judges. If there be a big case and they cannot decide it and come to a decision, however great the court may be, let one of the judges come with both the parties before me, the Tsar. And whatsoever the judge shall wish to award, let them write down each award, that there be no mistake, and that I the Tsar may decide the case according to law.

Here we have provision for appeal to the Tsar in person.

Criminal appeals seem to have usually been decided by Ordeal by Boiling Water (Art. 84), or Hot Iron (Art. 150), and this is the only Article which suggests an appeal in civil actions.

Article 182. Of Unlawful Suits

No man who is in the district of the judges may bring an action in my Imperial Court, or anywhere else. He may appear only before his own judge in whose district he is, that the matter may be tried according to the law.

This is but a repetition of Arts. 175 and 179.

Article 183. Of Shepherds

All shepherds of my Empire who have actions among themselves touching murder, brigandage, theft, killing, harbouring or land, shall appear before the judges of the court.

With this Article compare No. 103, where serfs have their petty cases tried by their overlords, but are brought before the judges on five criminal counts, namely, bloodshed, murder, theft, brigandage and harbouring. A serf could not own property, but shepherds (*stanici*) were not necessarily serfs and might have land of their own, so to this list land disputes are added.

The article was probably inspired by attempts on the part of powerful barons to arrogate to themselves the power of trying their own serfs, villeins and shepherds for all offences, which the Tsar stopped by reserving criminal cases for his own courts.

At the same time the Church retained the privilege of trying its own people, even for these offences, as is made clear in the Charter of the Monastery of the Archangel; only if one party to the case was not one of their own men was the matter brought before the crown courts. Dušan granted the same right to Hilendar.

Article 184. Of Prefects

My lords and prefects ¹ who hold the towns and market-towns may none of them receive any man for the prison without my warrant. And if any such do receive such a man without my command, let him pay me five hundred perpers.

¹ *kjefalije*.

Article 185. Of Prisons

In the same way, he who holds my prisons shall receive no man without my warrant.

The opening words of Art. 184 may be read in two ways. Either we may put a comma after the word "lords," contrasting them, as the county authorities, on the one hand, with the prefects who were in the towns on the other. Or we may follow Novaković who reads it unquestioningly as though the expression "who hold the towns" applies to the lords as well as to the prefects, which implies that lords of the county had some functions in the towns as well.

Article 186. Of the Judgment of Right and Crime

Cases which were brought for right and for crimes which were committed before the Code and which are now done, let each court go . . .

This clause is preserved only in this fragmentary form and that only in the Prizren MS., so it is not possible to establish the text or interpret its meaning.

Article 187.

Wheresoever the Tsar and Tsaritsa travel, or the herds and horses of the Tsar, in whatsoever village they rest, in that village no herdsmen may rest. And if there be one who rest in that village contrary to the law and the Tsar's command, the elder of the shepherds shall be delivered bound to that village and he shall pay sevenfold the damage done.

This Article, which is found only in the Athos and Bistrica texts, resembles Art. 82, where two parties of herdsmen are forbidden to stop in one village for fear of disturbance, and Art. 135, about the army, when the Tsar is travelling.

Article 188. Of Treasurers

The treasurers who are with the judges, whatsoever fines the judges shall impose and deliver in writing to the treasurer, such fine shall the treasurer take. And save what the judge impose and certify in writing to the treasurer, the treasurer may not take from any man.

This is the first reference in the Code to a special official of the court called *globar* or fines-master, whose duty it was to collect the fines imposed, but only upon the written certificate of the judges.

Article 189. Of Horses and Dogs

Wheresoever the horses and dogs and sheep of the Tsar go, whatsoever is written in the Tsar's books shall be given them and naught else.

This Article occurs only in the Bistrica text, and the Rakovica copy, which has an addition, "and the kennel-men, falconers and swineherds, wherever they go, nothing shall be given them."

Article 190. Of Mast

And where in a county there is mast, one half of it belongeth to the Tsar and one half to the lord on whose estate it is.

The exaction of a tribute in mast and acorns was an old and widespread custom. This tribute is called in Serb *žirovina*, from *žir*, an acorn or beech-mast; it was known in Byzantium as *βαλάνιστρον*; we find this word in Slavonic dress in the schedule of villages belonging to Hilendar in the *župa* of Struma, as *onomnia* and *valanistro*.

Article 191.

If a brigand steal the Tsar's swine, let the neighbourhood pay. And when swine are stolen, let the swineherd be judged with the county, as the court may decide.

This and the remaining clauses occur only in the Rakovica texts. Compare Arts. 199 and 200.

Article 192. Of the Court of Justice

For three things, for treason, for blood, and for rape of a noblewoman, let them come before the Tsar.

This clause, also only in the Rakovica text, seems incomplete.

It is evidently part of a series of enactments, with 103 and 183, dealing with the sphere of the Imperial Court of Justice, Dušan's King's Bench: it is obvious that the Tsar would wish to have direct control in cases of high treason for political reasons: for murder the motive is less obvious, and as this crime is frequently referred to in other parts of the Code, there is probably a special qualification omitted.

Article 193.

In inquisitions about horses and other acquisitions, or in any matter . . . justice. What is robbed or stolen, let an inquisition be made, or let him pay everything sevenfold. But if he say: "I bought the land from So-and-so," let jurors release from fine: and if the jurors do not release, let him pay a fine.

This is also peculiar to the Rakovica text. The first part seems a mere repetition of Art. 180, an enunciation of general principles, but the second introduces sworn arbitrators (*duševnici*) in doubtful cases. The reference is to the custom of *svod*, inquisition, for which see Art. 180.

Article 194. The Law of Treasurers for Church People

The law of fines for Church people. What is adjudged before the Church or prefect, and those fines which are imposed, let the Church have them all, as is written in the charters. Those fines shall be taken from Church people, as the Lord Tsar ordained the law of the land, and let Church officials be appointed treasurers, who will collect the fines and

deliver them to the Church, and the Tsar and the prefect shall take naught.

This Article also occurs only in the Rakovica text. The intent is clearly to confirm the privileges of the monasteries granted in several charters, in cases where "people of the Church" are tried, the Church receiving all the fines, which were looked upon as a source of revenue to the Church.

King Milutin set the example in his charter to the Monastery of St. Stefan, and Dušan granted the same privileges to Treskavac and his foundation at Prizren.

The words for "fine" and "treasurer" are *globa* and *globalar*.

Article 195.

And women shall not have lodging in a Church save only the Lady Tsaritsa and the Queen.

This clause is only in the Rakovica MS.

The "Queen" is the wife of the Tsar's eldest son. Cf. Art. 136.

Article 196. Of Tonsures.

And without the blessing of the Bishop, neither man nor woman may take the tonsure. To every man the law of the Church.

Article 197.

When a man come to any lord for the winter, let him give grass-tribute; for one hundred mares, a mare: for sheep, a ewe with lamb, and for one hundred cattle, an ox.

The charters refer to *travnina*, as payment for grazing-rights, but in a vague manner. That of Prizren provides for it according to law, but does not specify the law, probably because it was a generally known custom. There was an official called *travničar*, whose duties were obviously in connection with grass, *trava*. The Dečanski charter refers to an old law of *travnina*, "of the flock, 2 rams and 2 lambs and a cheese and a dinner."

The expression "when a man comes to any lord for the winter" obviously refers to the autumn migration of the herds from the alpine pastures, where grazing was abundant in the summer, but under snow in the winter, to the valleys.

Article 198.

The Tsar's revenue, tribute in kind, tax, and *harač*, let every man give, a measure of corn, half clean, half [*preprosta*],¹ and a perper in dinars, and the period of delivery for wheat is St. Dimitri's Day and the second period is at Christmas. And if a lord do not pay the tribute in kind at this period, let him be bound in the Tsar's court and kept until he pay double.

From the reference to *harač*, which is an anachronism, it is clear that this is the work of a later copyist, for *harač* was a Turkish poll-tax, and the word could not occur in the pre-Turkish days. Probably the main text is authentic, though not accurate: the latter part deals only with *soč*, payment in kind.

¹ What this word means is not clear.

Article 199.

And if a horse die in a village and if the village hath not killed it, nor driven it away, but it have died by act of God, the village shall pay nothing.

Article 200.

And if any man in the land whose horse die, or a wolf have eaten it, or himself killed it, and he have taken keep for the horse, and the truth be found, if it be so, let the lord whose man he is pay sevenfold.

These clauses are as confused as the others which are peculiar to the Rakovica text, but clearly they form part of a group, with Arts. 190 and 191.

The object is to prevent barons' grooms from claiming the right of fodder for horses which may figure on the schedule as their masters' property, but have died in the meantime.

Article 201.

If a serf flee anywhere from his lord to another land, or to the Tsar's, where his master find him, let him brand him and slit his nose and assure that he is again his, but let him take naught from him.

The penalties here are quite in keeping with the whole of Dušan's legislation, but there is no confirmation of this Article by direct evidence or by inference. It is interesting that a baron had no right to seize any of his villein's property.